

MT LEGISLATIVE HISTORY

Chapter 155 19 59

Bill H. (S) 112

Original bill & hist. C

H. Committee on Workmen's Compensation

S. Committee on Labor and Compensation

Hearing Date(s) Feb 19 ✓ C

Hearing Date(s) Feb 10 ✓ C

Feb 24 ✓ C

Feb 11 ✓ C

Feb 26 ✓ C

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Did this bill originate in an interim committee?        Yes        No

Committee                           

Report

SENATE COMMITTEE ON  
LABOR AND COMPENSATION

The Labor and Compensation Committee met in Room 408 at 8:55 A.M. on February 10, 1959. The meeting was called to order by Senator Anderson, Chairman, with the following members present: Senator Anderson, Senators Siderius, Reardon, Mahoney, McKenna, Mackay, Scofield, Spear.

Senate Bill No. 189: Under Plan 2 of Workman's Compensation Law Insurers will pay slight increase to Industrial Accident Board.

Ernest Salvas: Two years ago the legislature passed legislation providing that the administration cost of Industrial Accident Board would be born by the 3 plans in relationship to the actual cost and this would be done by assessment on the various plans and in just looking at the Industrial Accident Report both Plan 1 and 3 had sufficient income from the assessments to more than cover the amount. Plan 2 did not, income under Plan 2 was \$33,000.00, disbursements \$54,303.00. This bill is designed to increase the assessment to cover the problem of making Plan 2 pay its way through. Plan 1 is the insured, the employer who carries his own insurance, Plan 2 is the insurance companies, Plan 3 the state. The total income of all 3 plans was \$340,000.00, total disbursements -- \$286,000.00.

Senate Bill No. 112. Occupational disease bill.

Opponents to be given 15 min and 5 min for rebuttal, proponents 20 min.

PROPOSERS:

Senator Hibbs: Member of the Senate and a co-sponsor of the bill. S. B. 112 is a proposed occupational disease act. The bill provides for the payment of compensation as the members will see from Section 4, a list in the letters running from (a) to (r), of the types of poisonings. In as much as the focal point of the controversy with regard to occupational disease has been silicosis I will discuss that more than any one phase of the bill. Section 11 of the bill---the various exemptions and the rules and payment of the compensation, specifying all silicosis compensation can be paid only where the claimant has had a total of 1,000 work shifts of exposure in a period of 8 years and where the alleged injury occurs within and alleged claim is made in 4 years of such employment. If the employer should discharge him because of the disease it is necessary for him only to prove 700 work shifts. To the diseases other than silicosis the requirement is 120 days after his last work shift. The bill provides for sums of money exactly as the Workman's Compensation Act provides and payment for the compensation might go up or down depending on the times. The pattern of the Workman's Compensation Act was followed and the pattern was embodied in the bill. Section 14 -- the provisions of Medical Plan and Medical Pulmonary specialists. The basis of the selection of the medical committee, the Montana Medical Association may submit to the Board the names of 30 qualified physicians from which the Board would appoint and it may appoint a list of three or more physicians who have had a special training and experience in the diagnosis

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care and treatment of diseases of the pulmonary tract and if they don't submit such a list the Board is free to select its own. The Association was contacted and they said they would be glad to submit a list and work with the Board in naming their best and qualified physicians. In Section 15 -- Claimants -- In case of a controversial matter, 2 of the 3 specialists must examine the claimant, if it isn't a controversial matter, then 1 is sufficient. Where death is attributed by silicosis and in the event his claim has been made, they have the same rights. There is provision for periodic medical examinations and payments, a provision prohibiting lump sum settlements but pays the attorney fees in lump sum and pays burial expenses and hospital and medical expenses and special provisions. Section 27. -- Where there are complications with silicosis, if that complication causing death is TB of the lungs, the compensation is paid in the same manner if the sole cause was silicosis. There is the usual inclusion of payment in the event of willful misconduct and a provision that it couldn't be assigned or attached. Under waivers and this question of waivers has been a hot issue in this sort of legislation. This bill provides that waivers may be taken by the employer and only in certain specified instances. The waivers must be approved by the Industrial Accident Board and only after the specialists have had an opportunity to examine him together with the X-rays. This act down to that point is precisely word for word with the bill as you members of the committee amended it and passed it over to the House last year, except the first paragraph on page 12, with "the Board shall disapprove such waiver the employer may discharge such applicant for employment without liability to such applicant for employment by reason of such discharge or such occupational disease." (3rd Paragraph of Section 30.) This provision mentioned is in the nature of a compromise. The employers tell us that there is a great disposition of men that can not get employment because of their conditions and with this provision, they could sign a waiver and go on to work. Whenever the waivers could not be obtained, gives them 1 year to get that straightened up. The plan of the bill is adopted from the Workman's Compensation Act, providing for Plan 1, 2 and 3. I suspect there is not much controversy after this section I have mentioned, -- the portion of the bill that precedes it and after Section 30.

Senator Mahoney: If a man were employed after July 1 and a waiver was not obtained before July 1 in the next year, no waiver could be asked for?

Senator Hibbs: That is correct.

#### OPPONENTS:

Ernie Salvas: Montana Mine, Mill and Smelter Workers. I am not adequately prepared to go into the bill itself. In going into the detail we could refer to the statements we made 2 years ago relative to this type of legislation. They are as applicable today as they were 2 years ago. The Governor in his message 2 years ago made 2 points calling for occupational disease by the legislature and said that it should have 3 things to be measured by, the law should be fairly reasonable to all parties, should not hurt the employee and should come under the Workman's Compensation Act. There are several things

about this bill that don't fit the Governor's criteria or the general accepted criteria of this type of legislation. In the list, the schedule of diseases, it does not cover all diseases. Occupational disease legislation like workmen's compensation legislation should not be limited because it is not listed in the schedule. One of the proposals with respect to the workers in this, they should be adequately safe-guarded because of loss of employment because of non-disabling silicosis. Silicosis is a disease that does not make it a disability until the latest stages of the disease. In the question of waivers and which is the most objectionable feature of the bill, I could read my statement I made two years ago, they are as applicable today as it was then. There is the liability under waivers, that has placed a worker who saves his rights to compensation, in fear of losing his job, discriminating against those refusing to sign waivers, they will not remain on the job. Waivers we know lead themselves to approaching conditions of unemployment. (Read a statement of Arthur D. Heese of Washington, D.C. on Workman's Compensation.) He says the extension of waivers is to be another backward step. We have to guard against whether the employers are getting the protection under this act or whether the workers will. One of the features of this removes from the employee to the right of common law suit as workmen's Compensation Law does. In Colorado they have an occupational disease act and it is one of those types of laws and it provides more protection for the employer than it does the employee. Legal authorities in Colorado say the occupational disease act is so "limited, restrictive and unreasonable, a disabled workman would be better off if the act were repealed." The Colorado provides for waivers.

Senator Mackay: Is it limited to one year?

Mr. Salvas: I do not know if this is a limited waiver. Two years ago on the question of waivers, the big issue, we explored the problem of waivers, to just extent it was present, not only with Senator Hibbs, but Miller, Valiton and we just couldn't come up with an answer where a waiver could be used at all, where the employers would not get the benefits. This doesn't prevent the employer from discharging workers who have some degree of silicosis. There is legislation in the House on occupational disease which is preferable to this bill here. (Cited several examples of the Wisconsin law) A bit of insurance law is included in the House Bill. The question involved is how to change from a situation where you don't have occupational disease coverage to one where you do. We don't try to, in the House legislation, to assess liability on the employer from a previous existing condition but do feel the worker should be fully compensated. This House Bill provides for a special disability fund which would allow apportionment for an employee under silicosis or any other injury. The amount of injury done to the worker after passage of this act or if he becomes unemployed by the employer, would be the only liability the employer would have. He could apply for apportionment.

Mr. Umber: In order to hurry along I would like to show my agreement with the statements made by Mr. Salvas, but also to go into one point just a little further and call Mr. Robert Weller, Montana District Council of Sawmill workers.

Robert Weller: If this bill goes through with the waivers in it would also be a step in opening the door expanding the waivers into the Workman's Compensation Act. This waiver is a direct threat to Workman's Compensation also.

Mr. Salvas: It is a problem to the taxpayers because in looking at the report of the Department of Public Welfare in December 1958, it gives the amount of people and amount of money expended to silicosis by county: on December 1958 there were 619 silicotics in Montana, receiving aid from Public Welfare, November 1958 there were 622, November 1957 there were 577. The decrease was probably due to deaths. In Silver Bow County --- December 1958, 453; November 1958, 455; December 1957, 414. The annual report of the Department welfare shows less than 1/2 million dollars of money of the taxpayers money paying silicotics throughout the state. It is when and to what degree is the State of Montana willing to pay the cost of the disease resulted from employment.

REBUTTAL:

Senator Hibbs: With the final comments of Mr. Salvas I very much agree that it is essential that industry pick-up and pay for the injury to its employees occasioned by its particular type of industry. The principal discussion is around the suggestion of waivers. You have seen many occupational disease bills introduced before, they have been to one extreme or to the other. There is the acts which have been offered by the employers which had fixed firm waivers, as Salvas said; that would lend themselves to favoritism and then the opposite. I think this bill is as good a compromise of the two sides, as neither the employers or the employees is very enthusiastic about it. By this particular type of compromise we are going to get it off the taxpayer and where it belongs. In the Colorado law the waivers is a firm, hard, restrictive clause and I don't blame them for not like it. This waiver has the limited proposal for time it can be taken and in only the event of examination required for a period of a year and after that then it isn't a question is the bill for the employee or the employer. If we are going to pass a bill we should pass some legislation for general benefits. It has advantages for both the employers and employee. The gentleman's statement that it might be contagious and get over into the Workman's Compensation Act is rather foolish because that Act has been on the books for a long time.

Senator Mahoney: What happens to an individual who dies from silicosis and couldn't come under the required time?

Senator Hibbs: He isn't covered.

Mr. Salvas: I agreed with Hibbs on that it is a progressive disease and is not contacted in a limited time. The results of a few months of exposure could in later years bring about disability.

Senator Manning: In the mines now in Butte, do they take a physical before they can go back to work?

Mr. Salvas: Yes they do, the Anaconda Company has become more strict in the last few years.

SENATE COMMITTEE ON  
LABOR AND COMPENSATION

The Labor and Compensation Committee met in Room 408 at 8:00 A.M. on February 11, 1959. The meeting was called to order by Senator Anderson, Chairman, with the following members present: Senator Anderson, Senators Siderius, Manning, Reardon, Mahoney, McKenna, Scofield, Spear.

Senate Bill Nol 189: Proposes to increase the rate of the insurors on Plan 2 to 3.25%.

Senator Reardon: This is the bill that the Industrial Accident asked Ruane and myself to put in. The cost of administration, due to the higher costs than what it has been, they are taking a loss in the account by the insurance company.

John Risken: Attorney in Casualty Insurance Companies opposed to Senate Bill No. 189, gives the Industrial Accident Board to excess, almost double what it is now assessing. It is not fair, when you take into account the insurance companies writing insurance in the state are already assessed a tax which taxes. Mr. Taft ascertained in his letter that the higher industrial coverage which we are now putting into the general fund be earmarked for the Industrial Accident Fund rather than going into the general fund.

Andrew Kiely: Accountant for the Industrial Accident Board, introduced Mr. Robert Swanberg who just came in and said he could talk about the bill much better than he could.

Mr. Robert Swanberg: Chairman Industrial Accident Board. We are asking by this bill that the assessment on the private insurance carrier be increased. The increase is needed in order to support the administrative operations, each plan contributes a certain amount of cost. The cost of administering plan 2 has exceeded the amount that was allocated and makes it necessary to ask for this increase. The collection or assessment against the private companies for the fiscal year on July 1, 1958 were \$34,416.61 and the distributions July through December 1958 were \$22,381.60, the total distributions will total an estimated \$44,736.00. By increasing it to 3.25 we should be able to raise \$58,000.00.

Senate Bill No. 112: Occupational Disease Law.

Senator McDonnell: Co-sponsor of the bill. It is (1) that I believe that workmen should be protected and subject to compensation when they become ill or disabled because of industrial occupations. (2) I think it is up to the employers in the State of Montana to assume the responsibility for this compensation which is to be paid to the workmen, (3) the way it has been working in Montana the employer has not satisfactorily protected the workman and many times the burden falls on the people of the state of Montana and I think the people of the state of Montana in the sense that these workers become disabled or death, they should be paid by the employers in which they were injured and employed at the time they received this disablement or in many cases, death. The greatest objection to the bill last time was the waiver. This waiver feature in this bill is much better than it was in the last session's



amendment. I think an occupational disease bill is a must in Montana. We are not going to get a bill which is going to satisfy both the labor and the employer completely. The very fact that this bill does not please either labor or the employers makes the bill somewhat meritorious. I think this is the best bill on industrial disease introduced.

Senator Anderson: What would be wrong with the waiver of 6 months, since the bill does not become effective until July 1? What would make it 10 months?

Senator McDonnell: No objection.

Senator Anderson: In section 4, in the list of your diseases, it doesn't consider what complications that might surround any kind of pulmonary disease. I believe that is a little bit too limited, there should be some way to amend this to cover the complications.

Senator McDonnell: I think the intent of the drafters of the bill would include perhaps such an amendment, however they did have help and counsel in drafting it.

#### OPPONENTS:

Mr. Salvas: We aren't in the sense opposed to Senate Bill No. 112 however I think it needs some improvement. Senator Hibbs and McDonnell speak of this bill as being a compromise by the employers and employees, I think it would be more applicable to the bill of 2 years ago. Their original bill was more of the compromise than the bill they are talking about now. The waiver was inserted at the request of the employer and they are doing away with the common law rights of the employee. Under Section 3, sub-section 26, it defines silicosis as a "chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide ( $\text{SiO}_2$ ) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic X-ray pattern, and by variable clinical manifestations." I think that puts a limitation on the definitions of silicosis. I would suggest that you let a panel of doctors determine it. I would suggest perhaps you make it a "chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide."

Charles Huppe: Attorney and Special Counsel for the AFL-CIO. We appear in opposition to this bill as we have appeared before committees of this kind since 1949. We can not support 112 because after reading over 112 in its present form it affords little, if any, protection to a few occupational diseased workmen, considered specifically, it writes out any partially disability compensation. To be compensated you must be permanently totally disabled or dead. This is not what is intended by occupational disease compensation. This is a 24 page bill with all kinds of limitations and protections and all kinds of clauses and legalities, -- writes out any real protection and it does what is done, in one sentence. In another law which has been on the books since 1945, is that of the Public Employees Retirement Act. (Section 68-901 (H)). When that act was put into effect it was the occupational disease coverage then and it has been in the Codes ever since. I think some people are overly cautious and being overly cautious they damage the good intention that they have. I don't believe this bill was introduced for merely political purposes. This bill says one thing and does another. I do believe this bill could by extensive amendment, be made a bill which we could approve even though reluctantly. I don't see any reason for doing all of that labor when there is a bill before the House which does that. I suggest this bill be put into a subcommittee and may be we can sit down

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the present time the payroll disbursement requires continual compilation of figures, putting in the account number and then having it detailed out. Cost about \$24,000 for us, which we don't have a budget for."

Jack Crosser: from the State Auditor's Office: "I have a letter prepared on the additional increase 34% of the total warrants over the past fiscal year. \$12,000 the first year and then \$10,000 the following year."

Mr. Hatfield: The same situation as at Warm Springs.

House Bill No. 397: Ernie Salvas: Montana Mine, Mill Legislative Council, Proponents of Sub. House Bill 397. In contrast to Senate Bill 112, as amended, which is a separate act under Montana law, 397 provides that the occupational disease of silicosis shall be included in the occupational diseases under Montana law and provided for that injury. Also provides that the employers may elect to insure against other occupational diseases in addition to silicosis. It also provides because of its being incorporated into the present act for payment in certain cases of partial disability. The provisions which were included in Senate Bill 112, relative to non-disabling silicosis in that the employee could be compensated if it was found unable for him to continue on the employment in the limits of \$5,000. On page 4 in line 68, is a typographical error and should be "estop" instead of "stop". This could be amended. Delete the period at the end of page 5, line 70 of the printed bill and insert the following: "Provided further, that any silicotic employee who is discharged by his employer to escape liability of silicotic benefits under this act, shall be eligible to receive compensation under this act when disabled." This is additional protection with respect to discharges for employees."

Charles Huppe: Attorney for the State A.F.L.-C.I.O. Proponent of Sub. House Bill No. 397. This bill is a bill which is limited to silicosis and siliac dust diseases in the coverage but it does bring the disability from those under Workmen's Compensation Act. There is involved in this proposed law, an apportionment and there is a companion bill which is in the appropriate nature, which is what they call, "second injury fund bill". One of the major objections on the part of industry to general occupational disease and particularly silicotic coverage has been that many people have gotten their dust from other employment that is from the mining industry in the State of Montana. Now one approach suggested in the past is the idea of elimination from protection of the workmans compensation act these people that have permanent dust in their lungs. Following the second principal it would pay the total benefit to the disabled man and then allow the employee to seek an apportionment so that he is reimbursed if he has made payment and then he can then go to the board and seek apportionment for what he has paid in.

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Opponents: Wm. Kirkpatrick: Western General Counsel of the Anaconda Company. "I might mention to the committee, that in the Senate Bill 112 was sent to the House with the amendments, which were opposed on the floor, there was a benefit that an employer would be responsible for any silicotics who were presently in his employment and also a benefit that he would be responsible for any aggravation of that condition. In the case of a new employee, he could hire a silicotic and not only be responsible for that condition but would be responsible for any further silicosis. In 1937 there is no such provision, or, in other words it would be absolutely essential for any employer in the mining business in estimating any benefits, to weed out any silicotics that were presently employed. At the time we had our subcommittee meeting we discussed aggravation apart from progression and I said then medical authorities were unable to accurately determine whether there would be a progression of silicosis as distinguished from aggravation. Dr. Hagen is here from Galen and has done considerable work on this. He says that it is entirely possible to hire a man, first have his x-ray taken and find nothing and then have another x-ray taken and find a marked silicotic condition. It is possible for some men to inhale a fixed amount of silicon dioxide and not have it show up until later. You could also hire a man and have him be classed as a Stage 1 in silicotics and remove that man to a different environment and then in five or six years have another x-ray taken and find that he was Stage 2. It is for that reason that it is difficult in the case of the Anaconda Company to distinguish from aggravation rather than a progression. The notice requirements of the regular law has conditions now contained in this bill. It would be possible for a man 25 to work in the mines, quit and then come back when he is 65 and have disabling silicosis. Under this bill and also 112 for that man to file application and say that he worked for the mines at 25 and say he developed silicosis and we would be responsible even though he would have been away from our employment for 20 to 30 years. The requirements are most unfair and could develop phony litigation or a "lawyers relief bill". This bill would have to be considered separate and apart from any other bill. It provides for appropriations from the fund and there is no fund created in the bill. Presupposes there will be a fund created in some future time."

Dr. Hagen from the Galen Hospital: "We all look at occupational disease and it has a tendency to progress as time goes on."

Senator Anderson: "What percent of gas would it be possible to inhale in the first case?"

Dr. Hagen: "It would be a particular situation where a man who had one exposure to silica and before the natural progression of the fibrous in the lungs, changed his occupation and if an x-ray was taken."

Senator Anderson: Would be relative to the condition of the host!"

Senator Mahoney: "A man who had been continuously exposed to

by the employer --- it all comes back to the employer as to where he got the disease."

Mr. Salvas: "I would like to advise the committee that Mr. Swan yesterday in a conversation, raised some serious considerations on the administration of 112."

House Bill 402: Proponents: Charles Huppe: "It makes only 1 change in the present law in that it provides, "that the board must furnish a copy of such testimony, written exhibits, pleadings, records and proceedings to the claimant without cost." The purpose of this is so that when there has been and an attorney is representing a claimant, he has access to the full records of the claim before the board. Attorneys living in Helena have the advantage of being close enough to have access to the records but those living outside of Helena, and mot of these cases do not pay high fees, it would be too expensive to come to Helena to see the records. This would merely mean that they would have to make another copy of the records."

Ernie Salvas: "I think, due to the fact that the board does not furnish a copy, it causes a real hardship. The cost in the initial stages is much less than the claimant coming in later. It presents an economic burden."

Mr. Kirkpatrick: "I think it should be amended to include the reciprical provision that the employer or employee should be furnished with a transcript. Our company could afford to buy the report but there are some small employers in cases that would be involved."

  
Chairman

with them and work things out. We don't come as apponents to occupational disease coverage but do come as opponents to this bill in its present form.

Senator McKenna; They have to be totally disabled in this bill.

Mr. Huppe: Yes, "Section 3, number 5 of this bill reads as follows: (read what disablement means)

Senator McKenna moved that we recommend that Senate Bill No. 189 "do pass", seconded by Senator Reardon. DO PASS.

S. B. No. 112: Discussion on the suggestion that it be put in sub-committee. Senator McKenna moved that we appoint a sub-committee on 112 and they report back Friday morning at 8:00, seconded by Senator Spear.

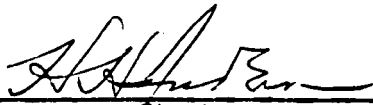
House Bill No. 20, moved that we recommend it "be concurred in" by Senator Siderius, seconded by Senator Reardon. Carried.

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| Senator Siderius | Aye |
| Senator Manning  | No  |
| Senator Reardon  | Aye |
| Senator Mahoney  | Aye |
| Senator McKenna  | Aye |
| Senator Scofield | No  |
| Senator Spear    | No  |

Discussion followed on whether the committee report should be sent in on a majority and minority report. It was decided not.

The following subcommittee was appointed to act on S. B. 112:  
Chairman Mahoney, Senator Reardon, Senator Scofield.

The meeting adjourned at 9:10 A.M.

  
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Chairman

COMMITTEE ON WORKMEN'S COMPENSATION

February 19, 1959

A meeting of this committee was held in Room 418 at 3:50 PM on adjournment this date with Chairman McGarvey presiding. Roll call revealed a quorum present and the following proceedings were had.

The following Senate bills were taken under consideration: 168, 189, and 112.

It was decided that SB 189 would be considered at an open meeting on adjournment Tuesday, February 24, 1959, in Room 418. This bill relates to increasing insurers payments to the Industrial Accident Board under Plan 2 of the Workmen's Compensation Act.

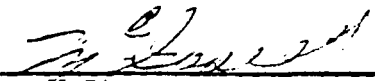
SB 168 was explained by the Chairman as to the changes made. Section 92-104 now provides that the Industrial Accident Board shall consist of three members, the Commissioner of Agriculture, the Labor and Industry Commissioner, and one member appointed by the Governor. HB 168 provides for changing the Commissioner of Agriculture for the Director of the Bureau of Vocational Rehabilitation. Rep. Emmons stated that the bill should provide that a majority of the Board members be present at meetings. It was also mentioned that consideration of the matter of the salary of the Chairman of the Industrial Accident Board should be taken since the House has passed a bill raising the Chairman's salary from \$7,000.00 per year to \$7,500.00.

Rep. Emmons made a motion that a sub-committee of one be appointed to confer with the Senate to see what the salary will be and that HB 168 "Be Concurred In As Amended".

Rep. Karlberg seconded the motion which carried unanimously.

After discussion of SB 112, the occupational disease bill, it was decided that it would be taken under consideration at the open meeting Tuesday, February 24, 1959, one-half hour after adjournment.

Meeting adjourned.

  
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MCGARVEY, Chairman

COMMITTEE ON WORKMEN'S COMPENSATION

February 24, 1949

A meeting of this committee was held on adjournment this date at 4:45 PM with Chairman McGarvey presiding. Roll call was taken and a quorum was present.

First bill under consideration was Senate Bill No. 189. The Chairman announced that the opponents and proponents would each have five minutes to speak on the bill.

First proponent to appear was George Wood, Hearing Officer of the Industrial Accident Board. He stated that this bill was introduced at the request of the Industrial Accident Board and explained that the present law assesses 1.75% from insurers under Plan Two which has been insufficient to carry the administrative costs; that they received \$30,000.00 and administrative costs were \$54,000.00 which costs are made up of safety services, costs in hearings, etc.; that Plans One and Three paid their way but Plan Two shows a deficit; that they might not have to assess the full 3.25% but will need that to make it up now and then lower it if it isn't necessary after this year to make up the deficit in Plan Two.

Appearing as an opponent was John Risken, Attorney-at-Law, representing the Association of Casualty and Surety Companies and American Mutual Insurance Alliance. He brought out that in 1957 the first assessment was made and they did agree at that time to bear a portion of the burden; that they also pay 2½ tax into the general fund; that the increase is an effort to abolish Plan Two from the scene; that the 2½ that goes into the general fund should be taken from that fund and given to the Industrial Accident Board; that the amount in the general fund is \$47,000.00 which is greatly in excess of the increase they would have in this bill.

Also appearing as an opponent was Patrick Hooks, Attorney-at-Law, representing the American Association of Reciprocal Insurers, who said this is an eighty-five percent increase over the bill of 1957; that this tax, when added to the premium tax, probably will cause decreasing of premiums for the Board.

The opponents and proponents were then dismissed and the bill discussed further. It was then moved by Rep. Emmons that Senate Bill No. 189 "Be Concurred In". The motion was seconded by Rep. Battin and carried unanimously.

The next bill considered was Senate Bill No. 112, the occupational disease bill. The Chairman went over the amendments made by the Senate to this bill. He then called in the opponents and proponents and told them they would each have ten minutes to speak on this bill.

First proponent appearing was Charles Huppe representing the State AFL - CIO. He said this committee passed a bill which he thought to be a better bill; that this bill is broader and covers designated diseases; that the labor people have decided that in order to get a start on occupational disease coverage, this bill will be supported and that they are in favor of having the bill passed.

Ernie Balvas, representing Mine, Mill and Smelter Workers, was the next proponent speaking on this bill. He testified that the bill does provide an occupational disease act which would be in advance in the State of Montana; that some limitations

are in the bill which are not good but that they are in support of the bill even recognizing the fact that it does not fill the bill entirely.

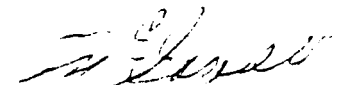
First opponent was W. M. Kirkpatrick, Western General Counsel for the Anaconda Company. He said they have reviewed the bill rather rapidly and with the amendments made by the Senate, they feel it is an extremely undesirable bill from the standpoint of the mining industry in Butte; that it is impossible for medical experts to distinguish the difference between aggravation and progression; that they feel that they would be responsible for any progression with the assertion that it is an aggravation; that it would be unwise for the Anaconda Company to continue to employ anyone who has silicosis; that after studying the bill, if the potential is too great to keep the silicotics, they would very probably have to go under Plan Three because the the potential liability they would carry.

Mr. Kirkpatrick then presented Dr. Hagen to the committee. Dr. Hagen is a member of the Silicosis Board at Galen and the radiologist at Galen. He offered to answer any questions regarding the medical aspect of determining the difference between progression and aggravation. He was then asked several questions by various members of this committee, explained the different stages of silicosis, and discussed the effect of other types of irritants.

Next opponent speaking was John Bley, representing the Mining Association of Montana. He testified that the amendments made by the Senate make the bill extremely difficult to work under and difficult for the employees; that the \$5,000.00 stipulation is unfair; that this type of bill and its amendments could lead too many grievances between the men and the employers.

They were then dismissed and after considerable discussion of the bill by the committee, it was suggested that consideration be postponed until the members could have a chance to study the bill and its amendments more thoroughly. It was agreed that the bill then be considered Wednesday, February 25, 1959, on adjournment.

Meeting adjourned.

  
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McGARVEY, Chairman

February 26, 1959

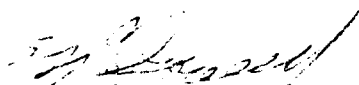
WORKMEN'S COMPENSATION

Meeting was called to order by Chairman McGarvey with 13 members present.

Senate Bill No. 112 was taken under consideration. Powers moved that it Be Concurred In. Seconded by Emmons. Considerable discussion was held during which Emmons suggested they pass the bill and introduce an appropriation bill to support it. Question was asked for and motion carried. Battin did not vote but reserved judgement.

Emmons then moved that the Chairman of The Workmen's Compensation contact the Appropriations Committee to ask for \$100,000.00 as a loan. Seconded by McNally. Motion carried.

Meeting was adjourned at 10:00 a.m.

  
\_\_\_\_\_  
McGarvey, Chairman



department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application, *providing however when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.*

Federal law not to decrease amount.

Repealing clause.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 7, 1959.

#### CHAPTER 154

An Act Repealing Section 93-1501-7, Revised Codes of Montana, 1947, as Amended by Section 1, Chapter 113, Laws of the Thirty-first Legislative Assembly of the State of Montana Relating to When a Witness Is Not Compelled to Attend Pursuant to Subpoena.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Repealing clause.

Section 1. That section 93-1501-7, Revised Codes of Montana, 1947, as amended by section 1, chapter 113, Laws of the Thirty-first Legislative Assembly of the State of Montana, be, and the same is hereby repealed.

Approved March 7, 1959.

#### CHAPTER 155

An Act Providing for Compensation of Workingmen for Disability Or Death Resulting from Occupational Di-

seases; Providing that This Act Shall Be Known as "The Occupational Disease Act of Montana"; Providing that This Act Shall Be Administered by the Industrial Accident Board; Providing for Definitions; Defining Occupational Diseases; Determining Proximate Causation; Providing for the Coverage of Certain Employers and Employees; Establishing Those Subject to This Act; Providing for the Liability of Last Employer and Exceptions; Providing that Right to Recover Compensation Pursuant to Provisions of This Act Shall Be the Exclusive Remedy Therefor Against the Employer Bound by This Act; Providing for Employee's Right to Reject This Act; Providing for Payment of Compensation, Exceptions and Limitations; Providing for Time and Manner for Filing Claims; Providing for Notice of Disability or Death; Providing for Medical Plan, Medical Committee and Pulmonary Specialists; Establishing Procedure for Medical Examination of Claimant; Providing for Autopsy; Providing that Compensation Payments for Disability or Death Caused by an Occupational Disease Shall Be the Same as Compensation Payments for Temporary Total and Permanent Total Disability and for Injuries Causing Death Under the Montana Workmen's Compensation Act; Providing for Burial Expense; Providing for Medical and Hospital Expense; Defining Aggravation and Prorating Benefits Thereunder; Providing for Compensation for Disability or Death from Silicosis Complicated by Pulmonary Diseases; Providing for Periodic Medical Examinations; Providing for Compensation Plans and for the Creation of the Occupational Disease Compensation Fund; Establishing When Common Law Defenses Are Not Available; Providing for the Payment of Benefits in the Event Employee is Discharged Under Certain Conditions; Establishing Penalty for False Representation by Employer; Prohibiting Lump-Sum Settlements and Providing for Payment of Attorney Fees; Providing for Limitation of Employee Liability in Certain Cases and Prohibiting Waivers; Providing a Date When Compensation Payments Under This Act Begin; Providing Penalties for Violation of This Act; Providing for Time and Manner of Payments; Providing for Payment to Guardian of Child Under Eighteen (18) Years

of Age; Providing for Procedure to be Followed by the Board; Providing for Right of Appeal to Courts; Providing Certain Administerial Powers of Board; Providing for Records, and Copies of Evidence; Providing That Books, Records and Payroll of Employers Shall be Open to Inspection by Board; Providing for Jurisdiction of Board to Hear Disputes and Controversies; Providing for Hearings, Findings, and Awards by the Board; Prohibiting Persons Receiving Compensation or Benefits Under Part Nine (9) of the Public Welfare Act of the State of Montana from Receiving Benefits Under This Act; Providing for the Diminution of Payments Under This Act Where Claimant, His Beneficiaries, or His Dependents Are Receiving Benefits Under the Workmen's Compensation Act of Montana or Any Other State; Providing That Wilful Misconduct, Wilful Self-Exposure, or Wilful Disobedience of Orders of the Board Shall Bar Right to Benefits Under This Act; Prohibiting Assignment of Compensation Benefits or Attachment of Benefit Payments; Providing for Payment of Medical Examination and Autopsy Expenses; Prohibiting the Vesting of Rights to Compensation Awarded Under This Act and Reserving Unto the State the Right to Reduce the Rate or Amount of Compensation to be Received by Any Person; Providing for a Repealing Clause; Providing That This Act Shall be Liberally Construed; and Repealing All Acts and Parts of Acts in Conflict Herewith; Providing an Effective Date.

*Be it enacted by the Legislative Assembly of the State of Montana:*

The occupational disease act of Montana.

Section 1. This act shall be known as "The Occupational Disease Act of Montana."

Administered by industrial accident board.

Section 2. This act shall be administered by the industrial accident board of the State of Montana. The members of the industrial accident board shall receive no additional compensation for administering this act. The actual and necessary traveling expenses of the members of the board while on business of administering this act shall be paid from the occupational disease compensation fund.

Definitions.

Section 3. **Definitions.** Except as in this section

and elsewhere in this act expressly set forth, the definitions contained in the workmen's compensation act shall apply to terms and words herein contained.

1. "Weekly wage" means the average of the weekly earnings of the employee in the employ of his employer against whom compensation is awarded during the period of one year prior to the termination of his employment with such employer, or during such lesser period in such year as he has been in the employ of his employer. In case the employee is absent from employment during the period as a result of the occupational disease for which compensation is claimed, then the week or weeks in which the absence occurs shall not be included in the computation of the average weekly wage. If the period provided in this section for computation of the average weekly wage does not include four weeks, then the average weekly wage shall be such as, having regard to the previous wage of the employee, or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the weekly earning capacity of the disabled employee in the employment in which he is working at the time of his disablement. "Weekly wage."

2. "Award" means the finding or decision of the board as to the amount of compensation due any disabled employee or the dependents of any deceased employee. "Award."

3. "Board" means the industrial accident board of the State of Montana. "Board."

4. "Compensation" means the payments and benefits provided in this act. "Compensation."

5. "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from performing any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability." "Disablement."

"Employee,"  
"workman,"  
"operative."

6. The terms "employee," "workman," and "operative," as used herein, shall mean:

Every person in the service of the state, and of a county, city, town, municipal corporation, or school district, including the regular members of lawfully constituted police and fire departments of cities and towns.

Every person in the service of any employer subject to this act as hereinafter defined or to whom such employer is required to secure compensation under this act, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and is not in the usual course of trade, business, or occupation of the employer, and not including agricultural workers and domestic servants unless the employer shall so elect.

"Beneficiary."

7. "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years, or if no surviving wife or husband then a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of disablement.

"Major  
dependent."

8. "Major dependent" means if there be no beneficiary as defined in a preceding section, the father or mother, or the survivor of them, if actually dependent upon the decedent at the time of his disablement, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

"Minor  
dependent."

9. "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding sections the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of his disablement. Minor dependents shall be awarded compensations to the extent of such

dependency, not to exceed, however, the maximum compensation provided for in this act.

10. "Invalid" means one who is physically or mentally incapacitated. "Invalid."

11. "Child" shall include a posthumous child, a step-child, a child legally adopted prior to the disablement, an illegitimate child legitimized prior to the disablement. "Child."

12. "Week" means six (6) working days, but includes Sundays. "Week."

13. "Wages" means the average daily wages received by the employee at the time of the disablement for the usual hours of employment in a day, and overtime is not to be considered. "Wages."

14. "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the disablement. "Wife" or "widow."

15. "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her disablement. "Husband" or "widower."

16. "Commissioner" means one (1) of the members of the industrial accident board. "Commissioner."

17. "Appointed member of the board" means that member of the industrial accident board appointed by the governor. "Appointed member of the board."

18. "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified. "Order."

19. "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve (12) times the average monthly payroll for the current year; provided, that an estimate may be made by the board for any employer starting in business where no average payrolls are available, such estimate to be adjusted by addi-

tional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

"Year."

20. "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth (30th) day of the succeeding June.

"Insurer."

21. "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

"Casual employment."

22. "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

"Physician,"  
"surgeon."

23. The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession in this state.

Singular includes  
plural and  
vice versa.

24. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

Masculine  
gender includes  
feminine  
and neuter.

25. Wherever the masculine gender is used, the feminine and neuter shall be included.

"Silicosis."

26. For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide ( $\text{SiO}_2$ ) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic x-ray pattern, and by variable clinical manifestations.

"Workshift."

27. "Workshift" means the work for which an employee is paid a day's wages.

"Workmen's  
compensation  
act."

28. "Workmen's Compensation Act" means the workmen's compensation act of the State of Montana.

List of  
occupational  
diseases.

Section 4. **Occupational disease.** The following diseases only shall be termed occupational diseases.

1. Silicosis
2. Poisoning by
  - (a) Arsenic or its compounds.
  - (b) Antimony or its compounds.

- (c) Cadmium or its compounds.
- (d) Chrome or its compounds.
- (e) Lead or its compounds.
- (f) Manganese or its compounds.
- (g) Mercury or its compounds.
- (h) Phosphorous or its compounds.
- (i) Selenium or its compounds.
- (j) Vanadium or its compounds.
- (k) Zinc or its compounds.
- (l) Sulphur or its compounds.
- (m) Copper or its compounds.
- (n) Benzine or its derivatives.
- (o) Benzol or its derivatives.
- (p) Hydro-carbons.
- (q) Carbon derivatives.
- (r) Carbon tetrachloride.

3. Tamarack poisoning.

4. Anthrax caused by handling of wool, hair, bristles, hides or skins.

5. Poisoning or disease due to exposure to x-ray or radioactive substances.

6. Provided, however, that regardless of the specific listings, heretofore, any employer who so elects may insure against disablement by other diseases arising out of or contracted from and in the course of their employment if such insurance has been approved by the board.

Section 5. **Proximate causation.** The occupational diseases defined by the preceding section shall be deemed to arise out of the employment only if:

Proximate cause  
of employment.

1. There is a direct causal connection between the conditions under which the work is performed and the occupational disease.

2. The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.

3. The disease can be fairly traced to the employment as the proximate cause.

4. The disease does not come from a hazard to which workmen would have been equally exposed outside of the employment.

5. The disease is incidental to the character of the business and not independent of the relation of employer and employee.

"Regularly employed."

Section 6. **Regular employees and subcontractors.** The term "regularly employed," as herein used, includes all employments, whether continuous throughout the year or for only a portion of the year, in the usual trade, business, profession or occupation of an employer. Where an employer procures work to be done for him by a contractor over whose work he retains supervision or control, and such work is a part or process in the trade or business of the employer, then such contractor and the person employed by the subcontractor, are, within the meaning of this section, employees of the original employer. A person engaged in work for another, and who, while so engaged is independent of the employer in the execution of the work, not subject to the rule or control of the person for whom the work is done, but engaged only in the performance of a definite job or piece of work, and subordinate to the employer only in effecting a result in accordance with the employer's design, is an independent contractor and an employer within the meaning hereof.

Act applies to all employers and employees subject to workmen's compensation act.

Section 7. **Who subject to act.** This act shall apply to, and only to, all employers and employees who now are or hereafter will be subject to the provisions of the workmen's compensation act of the State of Montana. The practice and procedure prescribed in such workmen's compensation act shall apply to all proceedings under this occupational disease act, except as herein after otherwise provided.

Compensation exclusive remedy.

Section 8. **Right to compensation exclusive remedy.** The right to recover compensation pursuant to the provisions of this act for occupational diseases sustained by an employee and arising out of and in the course of his employment, whether resulting in death, or not, shall be the exclusive remedy therefor against the employer electing to be bound by and subject to this act, except as to such employees as shall reject this act as provided herein.

Notice of employees' right to reject act.

Section 9. **Notice of employees' right to reject occupational disease compensation act:** Every employer sub-

ject to the provisions of this act shall post and keep posted in a conspicuous place upon his premises in languages, including English, as are from time to time designated by the board, a notice available for inspection by all his employees in substantially the following form:

"All employees are hereby notified that in the event they do not specifically reject the provisions of the occupational disease act of Montana, they are deemed by the laws of Montana to have accepted the provisions of such act and to have elected to accept compensation under the terms of said act, and that under the terms thereof employees have the right to reject the same by written notice thereof within ten days after entering the employ of this employer or after the first posting of this notice, whichever shall be the later; provided, however, it shall be unlawful for any such employer to require as a condition of employment the rejection of the provisions of this act, and any rejection which is the result of any such condition or requirement shall be void and of no effect."

Deemed to have accepted.

Section 10. **Liability of last employer, exception.** Where compensation is payable for an occupational disease the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease, but in the case of silicosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide ( $\text{SiO}_2$ ) dust for a period of ninety (90) actual workshifts or more after July 1, 1958.

Liability of last employer.

Section 11. **Payment of compensation; exceptions and limitations.**

A. Compensation shall be paid to every employee who becomes disabled by reason of occupational disease arising out of his employment, subject to the following conditions; and when claims are presented and notices given in accordance with the limitations of sections 12 and 13 of this act.

Payment on conditions.

1. No compensation shall be paid when the last day of the injurious exposure of the employee to the hazard

Exposure prior to effective date of this act.

of the occupational disease has occurred prior to the effective date of this act except as in section 11, paragraph "A," subparagraph 4 provided.

Total disability within 120 days of end of employment except silicosis.

2. No compensation shall be paid for a disease other than silicosis unless total disability results within one hundred twenty (120) days from the last day upon which the employee actually worked for the employer against whom compensation is claimed; provided that the board upon good cause shown may waive this limitation in the interest of justice, but in any case said period may not be extended to more than one year from the date of last employment by the said employer.

Waiver to one year.

Condition for payment for silicosis.

3. No compensation shall be paid in case of silicosis unless during the eight years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than one thousand (1,000) work shifts in employment in this state and unless total disability results within four years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

Proviso— for silicotic discharged to escape liability.

4. Provided, however, that any silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this act shall be eligible to receive compensation under this act when totally disabled if he has seven hundred (700) actual workshifts since January 1, 1954 for that employer, provided, further, when any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment, which is not yet disabling, is discharged or transferred from the employment in which he is engaged, or when an employee ceases such employment and it is in fact, as determined by the medical panel, inadvisable for him on account of such non-disabling occupational disease, to continue in it, and suffers wage loss by reason of such discharge, transfer, or such cessation, the board may allow compensation on account thereof as it may deem just, not exceeding five thousand dollars (\$5,000.00).

Limitation \$5,000.

Filing required.

5. No claim shall be maintained nor compensation paid unless the claim has been filed with the employer,

the insurer, of the board, in writing under oath within the time fixed by section 12 of this act.

B. The compensation shall be paid to the beneficiary and dependents of every employee covered by this act in cases where death results from an occupational disease arising out of his employment subject to the following conditions:

Payment in event of death.

1. No compensation shall be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases has occurred prior to the effective date of this act, except as in section 11, paragraph "A," subparagraph 4 of this act provided.

Exposure prior to effective date.

2. No compensation shall be paid for death from silicosis unless during the eight years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than one thousand (1,000) work shifts in employment in this state.

Payment for death from silicosis.

3. No compensation shall be paid for death from silicosis unless the death results within four (4) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the commission. In such cases compensation shall be paid if death results within seven (7) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

Death within four years.

Death within seven years.

4. No compensation shall be paid for death from any occupational disease other than silicosis unless death results within one (1) year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease other than silicosis for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the board. In such cases compensation shall be paid if death results within three (3) years from

Payment in event of death from other than silicosis.

the last day upon which the employee actually worked for the employer against whom compensation is claimed.

Filing of claim required.

5. No claim shall be maintained nor compensation paid unless the claim has been filed with the employer, the insurer or the board, as the case may be in writing within the time fixed by section 12 of this act.

Proof.

C. Proof of the exposure to silicon dioxide dust for a period of not less than one thousand two hundred (1,200) work shifts in employment in this state, with proof of total disability from silicosis, shall be prima facie evidence of exposure to harmful quantities of such dust during all such period.

Claims must be presented within time.

Section 12. **Claims must be presented within what time.** The provisions of section 92-601 Revised Codes of Montana, 1947, as amended, shall not apply to claims filed under this act.

It is hereby provided in the case of disability resulting from occupational diseases as herein defined, including silicosis, that all claims therefor shall be forever barred unless the same shall be presented in writing under oath to the employer, the insurer or the board as the case may be within thirty (30) days after claimant has filed his notice of disability as provided in section 13 of this act. In the case of death from an occupational disease, as herein defined, including silicosis, all claims therefor shall be forever barred unless the same shall be presented in writing under oath to the employer, the insurer, or the board, as the case may be, within thirty (30) days of filing the notice of death as provided in section 13 of this act.

Claims filed in triplicate with medical report.

Claims shall be filed in triplicate on forms to be furnished by the board and may be accompanied by a medical report of the claimant's attending physician. The provisions of this section 12 as to the time for presenting claims for compensation shall prevail over any other provisions of this act to the contrary.

Notice of disability or death.

Section 13. **Notice of disability or death.** The provisions of section 92-807, Revised Codes of Montana, 1947, as amended, shall not apply to cases of disability or death from occupational diseases as in this act defined.

Notice of disability or death in respect to which compensation is payable under this act, except disability or death resulting from silicosis, shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee, his beneficiaries, or his dependents knew or should have known the nature of the impairment or cause of death and its relationship to the employment, but in no event shall notice be filed more than one year after the last day upon which the employee actually worked for the employer against whom compensation is claimed.

In cases of disability resulting from silicosis which are compensable under this act, notice of such disability shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee knew or should have known of the nature of the impairment and its relationship to employment, but in no event shall such notice be filed more than four (4) years after the last date upon which the employee actually worked for the employer against whom compensation is claimed.

Notice of disability from silicosis.

In cases of a death from silicosis which is compensable under this act, notice of such death shall be given to the employer, the insurer, or the board, within thirty (30) days after the employee's beneficiaries or his dependents knew or should have known of the cause of death and its relationship to the employment, but in no event shall such notice be filed more than one (1) year after such death.

Notice of death from silicosis.

Such notice shall be valid only if filed in writing on forms to be furnished by the board, and shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the disability or death, and shall be signed by the employee or by some other person on his behalf; or in case of death by any person claiming to be entitled to compensation for such death or by some person on his behalf.

Validity.

Except if death occurs during the period of total disability described in section 11, B.3., in which case the period of notice may be extended to the term of seven (7) years from the last day of said employment.

Extension of period of notice.

Medical  
committee  
nominees.

Section 14. **Medical panel, medical committee, and pulmonary specialists.** The Montana Medical Association may, at least annually, certify to the board as "medical committee nominees" thirty (30) or more licensed physicians of the State of Montana who are particularly qualified in the diagnosis, care and treatment of occupational diseases. In addition thereto, and simultaneously therewith the Montana Medical Association may certify to the board as "pulmonary specialists nominees" three (3) or more licensed physicians of the state who shall have had at the time of certification at least five (5) years' practice in the diagnosis, care and treatment of diseases of the pulmonary tract and the interpretation of x-ray films thereof. From said list of physicians certified as "medical committee nominees," the board shall appoint thirty (30) physicians who shall serve as and be hereinafter referred to as the "medical committee" and who shall examine claimants for occupational disease disabilities other than silicosis. From said list of physicians so certified as "pulmonary specialist nominees" the board shall appoint three (3) or more physicians who shall serve as and be hereinafter referred to as "pulmonary specialists."

Pulmonary  
specialists  
nominees.

Appointment  
by board.

In the event that the Montana Medical Association fails to make the certification as hereinabove provided, then, in that event, the board shall of its own choice appoint thirty (30) licensed physicians in the State of Montana who are particularly qualified in the diagnosis, care and treatment of occupational diseases which said physicians shall serve as and be hereinafter referred to as the "medical committee" and shall appoint three (3) or more licensed physicians in the State of Montana who have had at the time of appointment at least five (5) years' practice in the diagnosis, care and treatment of diseases of the pulmonary tract and the interpretation of x-ray films thereof, which latter group of three (3) or more shall serve as and be hereinafter referred to as "pulmonary specialists." The "medical committee," together with the "pulmonary specialists," shall be known as and hereinafter referred to as the "medical panel."

Medical panel.

Procedure  
for medical  
examination.

#### Section 15. Procedure for medical examination.

A. In order to determine the validity of claims made

pursuant to the provisions of this act, the following procedure and no other shall be followed in the course of the medical examination of the claimant for official report to said board, claimant, employer, or insurer, as the case may be.

1. Upon the filing of a claim by a claimant for occupational disease disability, other than silicosis, the board shall direct a member from said "medical committee" to examine and determine the disability of the claimant and submit a written report thereon to the board.

Examination  
by member  
of medical  
committee.

Upon the filing of a claim for compensation for silicosis disability under this act, the board shall direct an examination of and report to the board upon the claimant by said "pulmonary specialists," or one of them, including such x-ray and other pathological examinations and tests as in the opinion of such specialist or specialists may be necessary for the purpose of determining diagnosis, disablement, and the nature and type of medical treatment, hospitalization and other care required. If the claim is not controverted as to any medical fact, the examination and report of one of said specialists, shall be deemed the examination and report of all "pulmonary specialists." If the claim is controverted as to any medical fact, the report shall be made by all of said specialists after a physical examination by at least two (2) of them. The findings and opinions of a majority of the number of said specialists then appointed shall constitute the findings and opinions of all of them. The contents of the report of said "pulmonary specialists" when placed in the record shall constitute prima facie evidence of fact as to the matter therein contained. The "pulmonary specialists" or any one (1) of them making the report shall be subject to examination upon demand of any interested parties.

Examination  
by pulmonary  
specialist.

Controverted  
claim.

Findings.

The "pulmonary specialists," or any one (1) of them in order to assist in reaching a conclusion may require the attending physician or director of a hospital or a sanitarium or other place in which treatment or care is being given, or has been given, to attend at a convenient time and place to consult with said specialists, or any one of them and to describe the nature and type

Authority  
of pulmonary  
specialists.



of care and treatment and furnish any other evidence which said specialist or specialists desire.

Board shall determine claim.

Upon receiving the written report of such examining physician or physicians so appointed, the board shall forthwith determine whether or not the claimant shall receive the benefits pursuant to this act and it shall forward notice of its determination together with a true and correct copy of said medical report to the claimant and the employer or insurer as the case may be.

Notice.

Hearing for protest by employer.

2. If within twenty (20) days after receipt of such notice and medical report the claimant, employer or insurer, as the case may be, is dissatisfied with said determination by said board, they, or any of them, may demand a hearing before said board pursuant to the rehearing provisions of section 92-829, Revised Codes of Montana, 1947. If, however, the board, claimant, employer or insurer, or any of them, is dissatisfied with the results of such first medical examination as indicated by said medical report, such dissatisfied party may upon thirty (30) days' notice in writing to all adversary parties and to the board require a re-examination by a member of said "medical panel"; provided, however, that if the benefits claimed are for a disability caused by silicosis the physician so selected by the dissatisfied party must be one of the "pulmonary specialists." Thereupon, after receipt of the report of medical re-examination, the board shall give like notice of its determination, whether said determination shall be the same as before or otherwise, together with a copy of said medical report, in the same manner as in the case of the first such examination and the party shall be entitled to a rehearing in the same manner as in the case of such first medical examination. The evidence of the two (2) medical examinations above described shall be final, and, so far as the medical examination of the claimant is concerned, no evidence of other or additional medical examinations shall be admissible before the board upon rehearing nor before any court upon the appeal, if any.

Re-examination for dissatisfied party.

Board shall determine on re-examination.

Evidence final when.

Examination in event of death from silicosis.

Section 16. **Where silicosis causes death.** Where silicosis causes death and a claim for death benefits is filed, the "pulmonary specialists," or any one of them, if the medical evidence be not controverted, shall examine all

available evidence pertaining to the claim and shall make findings and thereupon report to the board. The report shall constitute prima facie evidence of fact as to the matters therein contained.

Report prima facie evidence.

Section 17. **When occupational disease other than silicosis causes death.** When an occupational disease, other than silicosis, causes death and a claim for death benefits is filed therefor, a member of the "medical committee" shall examine all available evidence pertaining to the claim and shall make findings and thereupon report to the board. The report shall constitute prima facie evidence of fact as to the matters therein contained.

Examination in event of death from other occupational diseases.

Section 18. **Autopsy.** Upon the filing of a claim for compensation for death caused by occupational disease where an autopsy is necessary accordingly and scientifically to ascertain and determine the cause of death, such autopsy shall be ordered by the board; which autopsy shall be made under the supervision of the county coroner. The board may designate a duly licensed physician who is a specialist in such examinations to perform or attend such autopsies, and to certify his findings thereon. Such findings shall be examined by a member of the medical panel, and shall be on file with the board where it shall be a public record.

Autopsy.

#### Section 19. **Periodic medical examinations.**

Periodic medical examinations.

A. The employee entitled to compensation shall submit himself for medical examination by a member of the "medical panel," from time to time at a place reasonably convenient for the workman when requested by the board, the insurer or the employer.

B. The request shall fix a time and place having regard to the convenience of the employee, his physical condition and ability to attend. The employee and any other party in interest may have a physician present at the examination if such physician is provided and paid for by the employee or other party.

Request shall fix convenient time and place.

C. If the employee refuses to submit to the examination or obstructs the examination, his right to compensation shall be suspended until the examination has been

Suspension on refusal.

made, and no compensation shall be payable during or for such period.

Testimony  
by physician.

D. A physician who makes or is present at the examination may be required to testify as to the result thereof.

Board may  
reduce or  
suspend  
payment.

E. The board may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery, or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery.

Expense borne  
by whom.

Section 20. **Payment of medical examination and autopsy expenses.** Expense of the first medical examination as provided in section 15 of this act shall be borne by the employer if compensation is claimed under plan one, by the insurer if the claim is under plan two, and by the board if the claim is under plan three. The expense of re-examination shall be borne by the dissatisfied party requesting such re-examination. The expense of the periodic medical examinations, as provided in section 19 of this act, shall be borne by the party requesting such periodic medical examination. The expense of the autopsy, as provided for in section 18 of this act, shall be borne by the party requesting such autopsy.

Benefits payable.

Section 21. **Compensation benefits payable under this act.** The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease, or his beneficiaries and dependents in the case of death caused by an occupational disease, shall be entitled to under this act shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time, as is provided in cases of temporary total disability, permanent total disability and in cases of injuries causing death under the workmen's compensation act of the State of Montana.

No payment  
for partial  
disablement.

Section 22. **No compensation for partial disability.** No compensation as provided in section 21 of this act shall be payable to an employee who is partially disabled from an occupational disease.

Section 23. **Prohibiting lump sum settlements.** No award made upon any claim pursuant to this act may be converted into a lump sum payment, in whole or in part, except in case the claimant, after having filed a claim with the employer, the board or the insurer, as the case may be, shall have entered into a contract of employment with an attorney for the recovery of such claim, the terms of which employment contract shall be deemed to be reasonable compensation by said board for such attorney's services, in which case, the amount of such attorney's compensation may be ordered by the board to be paid by the employer, insurer or the board as the case may be, and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant pursuant to this act, or said board may at its option require such payments to be deducted each week in such amount as it deems advisable from the payments thereafter to be made to the claimant pursuant to this act and paid to said attorney as they are so deducted from the weekly payments to the claimant.

Prohibiting  
lump sum  
settlements.

Attorney's fees.

Section 24. **Burial expenses.** In addition to and separate and apart from any other compensation or benefit provided for in this act, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding five hundred dollars (\$500.00).

Burial expenses.

Section 25. **Medical and hospital expenses.** In addition to the compensation provided by this act, the following shall be furnished:

Medical and  
hospital expenses.

If an employee becomes totally disabled from an occupational disease, he shall be entitled to receive medical services, hospitalization, medicines and such other treatment as may be approved by the board not exceeding in amount the sum of twenty-five hundred dollars (\$2,500.00), provided, however, that in such cases of total disability where apportionment of such sum does not meet such hospital expense, the board may allow an additional amount for such additional hospital and medical expenses as in special cases it may deem proper.

Limitation  
\$2,500.00.

Additional  
allowance.

Any employee who suffers any of the occupational diseases listed in section 4, but who is able to continue

Continued  
employment  
limitation  
\$1,000.00.

in his employment while being treated therefor, shall be entitled to receive such medical services, treatments and medicines reasonably required, not exceeding the value of one thousand dollars (\$1,000.00).

When not  
required.

The employer, or insurer, or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished or if the employee is under hospital contract as provided in section 92-610 (2907), Revised Codes of Montana, 1947, as amended.

Adequate  
hospital facilities.

When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of a disabled employee in a particular case such disabled employee may, any time, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

Aggravation of  
occupational  
disease.

Section 26. **Aggravation.** Where an occupational disease is aggravated by any other disease or infirmity not itself compensable, or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable under this act shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death.

Silicosis with  
complications.

Section 27. **Silicosis with complications.** In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this act, and other than pulmonary tuberculosis, compensation shall be reduced as provided in section 26.

Compensation  
precluded when.

Section 28. **Compensation precluded by wilful misconduct, wilful self-exposure or wilful disobedience of orders of board.** Notwithstanding any other provision of this act, no employee, beneficiary, or dependent of an

employee shall be entitled to receive compensation for disability from an occupational disease when such disability was caused by the wilful misconduct, wilful self-exposure, or wilful disobedience to such reasonable rules and regulations ordered by the board and which have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of the employee.

Section 29. **Assignment of compensation; exemption from attachment or execution.**

Compensation  
not assignable  
nor subject to  
attachment.

A. Compensation, whether determined or not, shall not, prior to the delivery of the warrant therefor, be assignable.

B. Compensation shall be exempt from attachment, garnishment and execution.

Section 30. **Agreement by employee to waive compensation or to pay premium void. No liability in certain cases.** An agreement by an employee to waive his rights to compensation and except as otherwise provided in this act, an agreement by an employee to pay any portion of the premium paid by his employer, shall be void.

Waiver by  
employee void.

A. The employer may give, within two weeks of the application, physical examinations to the applicants for employment. Where an applicant for employment whether such applicant has been formerly employed by the employer to whom application is made, or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinafter provided.

Medical  
examination  
of applicant for  
employment  
within two  
weeks.

Employer  
not liable when.

The report of the medical examination of the applicant for employment and x-rays, if any, shall be delivered to the board by the employer within five (5) days after such examination to such medical report and x-rays, if any, shall be attached a certificate by the examining

Submission of  
medical report  
to board.

physician certifying that the medical report is the report of the physical examination of the applicant for employment.

Procedure for determination.

The board shall submit such medical report and x-rays, if any, to a physician of its choice from the medical panel, and such physician shall report to the board his finding as to whether the medical report is satisfactory. The board shall within twenty (20) days after the receipt of such medical report from the employer enter its order approving or disapproving such report and specifying the particular disease or diseases found. Such order shall be in writing stating the reasons for such approval or disapproval. A copy of such order shall be mailed to the employer and a copy of such order shall be mailed to the applicant for employment within twenty-four (24) hours after the board has approved or disapproved such report.

Right to discharge applicant.

An applicant for employment may commence work prior to the approval or disapproval of such report by the board, but if the board shall disapprove such report the employer may discharge such applicant for employment without liability to such applicant.

Limitation two weeks.

Provided, however, that if no physical examination is given to the applicant for employment within said two (2) week period then such applicant for employment shall be fully eligible to the benefits of this act.

Medical examination within 180 days after becoming subject to this act.

B. Employers may give within one hundred eighty (180) days after becoming subject to this act physical examinations to any employees which said employer has in his employment. Where an employee, though not actually disabled is found upon competent medical and x-ray examination to be afflicted with an occupational disease or diseases, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinbefore provided in sub-section A of this section 30.

Limitation 180 days.

Provided, however, that if no examination is given to the employee within said one hundred eighty (180) day

period then such employee shall be fully eligible to the benefits of this act.

C. All such reports shall become permanent records of the board.

Permanent records.

The board may make reasonable rules and regulations relative to the form, execution and filing of such reports not inconsistent with the provisions of this act.

Authority of board to regulate.

Section 31. **Rights of suit at common law.** There shall be no common law right of action for damage from occupational disease against an employer who elects to come under the provisions of this act, excepting for those employees not eligible for compensation under the terms of this act, or who reject coverage of this act.

Election to come under act as defense.

Section 32. **Prohibiting supplementing of benefits.** No person receiving compensation or benefits under the public welfare act of the State of Montana, as provided for by sections 71-1001 to 71-1008, inclusive, of the Revised Codes of Montana, 1947, as amended, shall be entitled to compensation or benefits under this act.

Welfare recipients not eligible for benefits.

Section 33. **Diminution of compensation.** Compensation payable pursuant to the terms of this act to the claimant, his beneficiaries or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the workmen's compensation act of Montana or any other workmen's compensation act.

Diminution by amount of other compensation.

Section 34. **Compensation plans.** Employers shall secure compensation to their employees under one of the following plans:

Compensation plans.

#### COMPENSATION PLAN NUMBER ONE

1. **When and how employer may elect to adopt—Direct payment to employee.** Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become, subject to and be bound by compensation plan No. 1, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such

Election by employer.

election is effective, may, by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

Proof of  
solvency filed  
under Plan No. 1.

2. **Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the State of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board. The industrial accident board shall require a fee of five dollars (\$5.00) to be paid into the industrial administration fund for the filing of every such proof of solvency.

Fee.

Permission  
to carry on  
business.

3. **Employer permitted to carry on business and settle directly with employee—Renewal of application.** If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation plan No. 1, shall, at least thirty (30) days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

Direct  
payment.

Additional proof  
of solvency.

4. **Additional proof of solvency—Revocation of order.** The board may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten (10) or more than twenty (20) days, after and upon a full hearing, revoke any order or approval theretofore made.

5. **Requiring security of employer.** If said industrial accident board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find reasonable and necessary to meet all liabilities of such employer, which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board, and may be a certain estimated percentum of said employer's last preceding annual payroll, or a certain percentum of the established amount of his annual payroll for said fiscal year or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall, at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

Finding  
requiring  
security  
of employer.

6. **Failure of employer to pay compensation—Duty of**

Duty of board  
on failure of  
employer to pay.

**board.** Upon failure of said employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such industrial accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this act, and it shall be its duty, insofar as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds, or foreclose and liquidate said securities.

Employer to make  
deposit or  
security when.

**7. When employer to make deposit or security to guarantee payment of compensation.** Within thirty (30) days after the happening of an accident where death or the nature of the disability renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability, in such sum as the board may direct; provided, however, that if sufficient securities are already on deposit with the said board, or if the said board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

Relief from  
liability when.

**8. When employer may be relieved from liability.** Any employer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which

such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the board; or

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

#### COMPENSATION PLAN NUMBER TWO

**1. Employer electing plan No. 2 to insure his liability.** Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

Employer electing  
Plan No. 2  
to insure  
his liability.

**2. Duty of employer electing plan No. 2—Amount of insurance necessary.** Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the board written acceptance of the provisions of compensation plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amount so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and

Duty of employer  
and amount  
of insurance.

necessary investigation, and the said employer shall furnish to such board all information which it may require.

**Terms of policies.**

3. **Policies to contain what.** All policies insuring the payment of compensation under this act, must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured. When any such policy, or the renewal thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars (\$3.00), which fee is to be credited to the industrial administrative fund.

**Agreement to pay and deposit of bonds.**

4. **Agreement to be contained in policies of insurance—Deposit of bonds.** No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the disablement or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the State of Montana, or of any school district, county, city or town in the State of Montana, in an amount not less than twenty thousand dollars (\$20,000.00) or more than one hundred thousand dollars (\$100,000.00) as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability in the manner hereinafter provided; and thereafter said insurer must make an additional deposit

to meet any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

5. **Policies made subject to this act—Form of insurance.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board, as otherwise provided by law.

Form of policy deemed made subject to this act.

6. **Renewals.** Every renewal of such policy shall be made and delivered to said board at least thirty (30) days prior to the expiration of the expiring policy.

Renewal required 30 days prior to expiration.

7. **Deposits by insurer with board.** Within thirty (30) days of the happening of an accident where death or the nature of the disablement renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the treasurer of the board for the protection and guarantee of the payment of such liability in such sum as the board may direct; provided, that if the board deems the amount on deposit by said insurer under the provisions of paragraph 4 of plan two, in section 34, sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

Deposits by insurer with board.

8. **How insurer relieved from liability.** Any insurer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

Relief of insurer from liability when.

1. Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the board; or

2. By purchasing an annuity within the limitations provided by law in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

9. **Cancellation of insurance policy.** No policy of insurance issued under the provisions of compensation plan

Cancellation of policy.

No. 2 shall be cancelled within the time limited for its expiration except upon thirty (30) days' notice to the employer in favor of whom such policy is issued, and to the board unless such policy sought to be cancelled shall have been sooner replaced by other insurance.

Report of insurers  
to board.

10. **Report of insurance companies to board.** Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

Policies to  
contain what—  
approval  
or change.

11. **Policies to contain clause agreeing to do what—Approval or change.** Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

Deposit under  
Plan No. 2  
as security.

12. **Deposits under plan No. 2 as security.** Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, and deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of such deposit, and shall at any time upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

## COMPENSATION PLAN NUMBER THREE

Plan No. 3.

Assessment for  
common fund.

1. It is the intent and purpose of compensation plan number 3 that each employer subject to and bound by this plan shall be liable and pay for all disability to employees due to occupational diseases coming under the provisions of this plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the occupational disease compensation fund, which fund shall be devoted exclusively to the payment of all valid claims for disability from occupational diseases arising out of or in the course of employment coming under the provisions of compensation plan No. 3. Such fund shall consist of all assessments and penalties received and paid into the fund, or property and securities acquired by and through the use of money belonging to the fund, and interest earned upon money belonging to the fund, together with any money appropriated by the legislature for the purpose of this act. The accounts of employers insured in such fund shall be kept in such a manner as the board may prescribe for the purpose of providing information and statistics necessary for determining any changes in rates of classification of employment. The occupational disease compensation fund shall be neither more nor less than self-supporting.

2. Any employer, whether subject to and bound by this act or not, may elect to comply with the provision of compensation plan No. 3 and pay into the occupational disease compensation fund the premiums provided in this act, in which event such employer shall not be liable to respond in damages at common law or by statute for disability or death of an employee due to an occupational disease during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such an employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn.

Election to pay  
into occupational  
disease compensa-  
tion fund.

3. All employments, occupation, or industries affected

Classifications  
by board.



by the provisions of compensation plan No. 3 shall be divided by the board for the purpose of the occupational disease compensation fund into classes whose rates may be set and readjusted at such times as the board may determine. The board may rearrange the classes by withdrawing any employment embraced in one class and transferring it wholly or in part to another class. Separate accounts shall be kept if the amounts collected and expended in each class for determining rates, but for paying compensation and dividends the fund shall be one and indivisible. The board shall determine the hazard of the different classes of occupations or industries, and fix the rates of assessment therefor at a percentage of the annual total payroll of such employer at the lowest rate consistent with the maintenance of a solvent occupational disease compensation fund, and the creation of necessary surpluses and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk. The board, in fixing rates, shall provide for the expenses of administering the fund, the disbursements on account of occupational disease to employees in each class, reserves adequate to meet anticipated and unexpected losses, reserves adequate to carry the class to maturity, and such other necessary reserves and surpluses as may be determined by the board. The board is authorized, in its discretion, to apply tentative rates, subject to modification in accordance with the loss experience of such risks.

Separate accounts.

Hazards and rates of assessment determined by board.

Expenses of administration.

Time and amount of payment.

4. The initial payment of assessments provided for herein by employers, whether presently engaged in a business, occupation or industry, subject to this act, or an employer who enters such business, occupation or industry at some future date, and all subsequent payment of assessments herein provided shall be made at such times and in such amounts as may be ordered and prescribed by the board.

Penalty for employer in default.

5. Any employer who is in default in the observance of any order of the board issued pursuant to the provisions of this act, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum (25%) over the established rate, and

such advance rate shall continue to be in force until such employer shall have ceased to be in such default.

6. If at the end of any year, it shall be seen that the contribution to the occupational disease compensation fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class, in proportion to their respective payments for the previous year.

Deficiency payment.

7. The treasurer of the board shall invest in bonds of the United States, bonds of the State of Montana, or bonds of any county, city, or school district in the State of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid such compensation and benefits as the board may direct; provided, however, that when there is sufficient money in the occupational disease compensation fund to meet such compensation payments, any surplus or earnings remaining may be placed in a reserve fund and invested in the securities specified in this section.

Investment of fund.

8. If any employer shall default in any payment to the occupational disease fund, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The board is hereby authorized, in its discretion, to cancel any employer's right to operate under compensation plan No. 3 for failure to pay the premiums due the occupational disease compensation fund; provided, that when the board makes an order cancelling an employer's right for failure to pay premiums or assessments to the occupational disease compensation fund it shall be the duty of the board to make such order at least sixty (60) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties wherein the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices to the effect that the board has cancelled the right of the said employer to operate under the act, and said notice shall give the date

Action at law on default.

Cancellation when.

of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the occupational disease act.

Authority  
of board  
to compromise.

When an employer's right to operate has been cancelled by the board for failure to pay premiums and when the board, in its discretion, finds that the property and assets of said employer are not sufficient to pay said premiums, the board may compromise said claim for premiums and accept a payment of an amount less than the total amount due.

Disability  
occurring  
during default.

9. For any disability to any employee resulting from an occupational disease occurring during default in any payment to the occupational disease compensation fund, the defaulting employer as to such disability shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the occupational disease compensation fund the amount of such default together with the penalty prescribed in sub-section 5 of this section.

Election to sue  
by suit  
or under act.

10. The person entitled to sue under the provisions of subsection 9 of this section shall have the option of proceeding by suit or taking under this act. If such persons take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the occupational disease compensation fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

Cause of action  
assigned to state.

11. Any cause of action assigned to the state under the provisions of subsection 10 of this section may be prosecuted or compromised by the board in its discretion.

Application for  
compensation  
under Plan No. 3.

12. Where an employee is entitled to compensation under compensation plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician attending him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the employee; provided

that the filing of a certificate of the attending physician shall not constitute a sworn claim for compensation.

13. For proper compliance with the provisions of subsection 12 of this section, the physician, after approval by the board, shall be paid out of the occupational disease compensation fund, five dollars (\$5.00) for each case.

Physician's fee.

14. Where death results from an occupational disease, the parties entitled to compensation under compensation plan No. 3, or someone in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the board.

In event  
of death.

15. In computing the pay-roll of any employer the entire compensation received by any employee subject to this act shall be included, whether it be in the form of salary, wage, piece-work, or otherwise and whether payable in money, board or otherwise.

In computing  
payroll.

16. Disbursements out of the occupational disease compensation fund shall be made by the treasurer of the board, as the board may order. If at any time there shall not be sufficient money in the occupational disease compensation fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six per centum (6%) per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

Disbursements  
from fund.

17. All earnings made by the occupational disease compensation fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the treasurer of the

Earnings made  
by fund.

Penalty for  
making of profit.

board, or any other person, out of the use of the occupational disease compensation fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two (2) years, or a fine not exceeding five thousand dollars (\$5,000.00), or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

Procedure  
for awards.

**Section 35. Hearing, findings and awards.** Upon receiving a demand for hearing or rehearing by a party dissatisfied by either the first or second determination of compensability by the board, as provided in section 15, the board shall hold such hearing within ninety (90) days from the date of demand for hearing or rehearing. After the final hearing by the board, it shall within thirty (30) days, make and file a finding upon all facts involved in the controversy, and its award, which shall state its determination as to the rights of the parties.

Power of board  
to make awards.

**Section 36. Power of board to award compensation and time and manner of payment.** The board in its award may fix and determine the total amount of compensation to be paid, and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid, subject to the limitations in this act contained; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.

Payment to  
parent  
or guardian.

**Section 37. Where payment due to child under eighteen years.** Where payment is due to a child under eighteen (18) years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or board, as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

**Section 38. Payment of compensation shall begin.** Payment of compensation under this act shall begin on July 1, 1959.

Payment under  
act to begin  
July 1, 1959.

**Section 39. Common law defenses not available.**

Common law  
defenses  
not available  
to employer  
in default.

A. Employers subject to and who fail to comply with the provisions of section 34 of this act shall not be entitled to the benefits of this act during the period of non-compliance, and shall not avail himself of the defenses:

1. That the employee was negligent, unless such negligence was wilful;
2. That the disability was caused by the negligence of a fellow employee;
3. That the employee had assumed the risks inherent, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools or appliances.

**Section 40. Penalties for violation.** An employer subject to this act who fails to comply with section 34 of this act, or a person who violates any other provision of this act, does an act prohibited thereby, or fails or refuses to perform a duty imposed by this act within the time prescribed by law or by the board for which no penalty is specifically provided, or fails, neglects or refuses to obey an order of the board or a judgment of a court under the provisions of this act, is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) nor more than six hundred dollars (\$600.00) for the first offense, and not less than two hundred dollars (\$200.00) nor more than twelve hundred dollars (\$1,200.00) for each subsequent offense.

Penalties  
for violation.

**Section 41. Deduction from wages of any part of a premium misdemeanor—Hospital contributions.** It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages of earnings of his workmen, or any of them, and the making or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contribu-

Unlawful  
to deduct  
premium  
from wages.

tions by employees to a hospital fund, as elsewhere in this act provided.

False representation by employee.

Section 42. **False representation by employee.** No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of such disease when the contrary is true.

Procedure for legal action by board.

Section 43. **Legal action by board.** Upon request of the board, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this act or for the recovery of money due the state occupational disease compensation fund or for any penalty provided for in this act, and he shall prosecute or defend all actions brought by or against the board, or the members thereof in their official capacity. The board may compromise any action brought under this act.

Board may sue and be sued.

Section 44. **Board may sue and be sued.** The industrial accident board of Montana may sue and be sued in its own name. Service of summons and other processes on the chairman of the industrial accident board shall be deemed service on the board.

Service on chairman.

Board shall adopt rules and regulations.

Section 45. **Board shall adopt rules and regulations.** Subject to the provisions of this act, the board shall adopt and publish rules and regulations governing procedure before it, and shall prescribe forms of notice and manner of serving the same in all claims for compensation, and may change the same from time to time at its discretion.

Board shall prescribe claim forms.

Section 46. **Claim forms prescribed by board.** Claims for compensation under this act shall be filed on forms prescribed and provided for by the board and shall be filed in the same manner as claims for compensation under the workmen's compensation act unless in this act otherwise provided.

Power of board to administer oaths, certify acts, issue subpoenas, etc.

Section 47. **Power of board in certain matters.**

A. Each member of the board and referees appointed by the board, for the purposes provided in this act, may

administer oaths, certify official acts, issue subpoenas, compel attendance of witnesses and production of papers books, accounts, documents and evidence.

Section 48. **Confidential information used, how.** No information furnished to the board by an employer or an insurer shall be open to public inspection, or made public except on order of the board, or by the board or a member of the board, in the course of a hearing or proceeding. Any officer or employee of the board who, in violation of the provisions of this section, divulges any information, shall be guilty of a misdemeanor.

Confidential information.

Section 49. **American experience table of mortality used.** Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American experience table of mortality shall be used.

Use of American Experience Table of Mortality.

Section 50. **Hearings and investigations—Technical rules.** Hearings and investigations before the board, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the board, and in the conduct thereof neither the board nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings or in the manner of taking testimony shall invalidate any order, decision, award, rule, or regulation made, approved, or confirmed by the board.

Hearings and investigations.

Not bound by technical rules of evidence.

Section 51. **Depositions may be taken.** The board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

Depositions.

Section 52. **Powers of board.** The board is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

Powers of board to administer this act.

Section 53. **Powers to issue writs and process—Fees**

Powers to issue writs and process.

for serving. The board, and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board or any member thereof shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

Fees for  
execution of  
process and  
witnesses.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

Power to  
administer  
oaths, etc.

Section 54. **Power to administer oaths, certify official acts, issue subpoenas — witness fees and mileage.** The board and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in an inquiry, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear by order of the board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

Fees and mileage  
for witnesses.

Section 55. **Power of district court concerning production of testimony — contempt.** The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case of proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than ten (10) days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production papers, and to punish for contempt, in

Power of district  
court to compel  
testimony.

Contempt.

the same manner and to the same extent as courts of record.

Certificates and  
certified copies  
as evidence.

Section 56. **Certificates and certified copies as evidence.** Copies of official documents and orders filed or deposited according to law in the office of the board, certified to by a member of the board, or by the secretary under the official seal of the board, to be true copies of the original, shall be evidence in like manner as the originals. In any court proceeding, wherein the question as to whether or not an employer or employee has complied with and is operating under and bound by the provisions of the occupational disease act of Montana, is a question for determination, a certificate by a member of the board, or by the secretary under the official seal of the board, certifying that such employer or employee has or has not complied with, and is or is not operating under, and is or is not bound by the provisions of the occupational disease act of Montana, shall be prima facie evidence thereof.

Apportionments  
of costs—  
expenses.

Section 57. **Apportionment of costs and disbursements — expenses.** The costs and disbursements incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing, arising out of cases under plan No. 3, may be paid from the occupational disease compensation fund, and in the discretion of the industrial accident board, including the necessary traveling and other expenses and disbursements of the members of the board, its referees or officers or employees incurred while actually conducting investigations, hearings or proceedings, within or without the State of Montana.

Books and records  
of employer  
open to  
inspection.

Section 58. **Books, records and payrolls to be open to inspection.** The books, records, and payrolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the payroll, the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject

the offending employer to a penalty of one hundred dollars (\$100.00) for each offense, to be collected by civil action in the name of the state, and paid into the industrial administration fund.

Section 59. **Jurisdiction of board to hear disputes and controversies.** All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

Jurisdiction  
of board.

Section 60. **Presumption as to legality of rules, orders, findings, etc., of board.** All orders, rules and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed by be reasonable and lawful, until and unless they are modified or set aside by the board or upon review.

Presumptive  
evidence.

Section 61. **Collateral attack not permitted.** No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided therein.

Collateral attack  
not permitted.

Section 62. **Appeal to district court.** Within thirty (30) days after the rendition of the final decision of the board provided in this act and within twenty (20) days after notice thereof, any party affected thereby, may appeal to the district court of the judiciary district of the State of Montana, in and for the county in said state wherein the occupational disease disability occurred or the employer may have a place of residence, or if such employer be a corporation may have his principal office or place of business and said appeal shall be for the purpose of having the lawfulness of the determination, order, decision or award inquired into and determined.

Appeal to  
district court.

Section 63. **Procedure upon appeal.** The said appeal shall be taken pursuant to the provisions of Section 92-834, Revised Codes of Montana, 1947.

Procedure  
on appeal.

Section 64. **Appearance on appeal.** Appearances shall

Appearance  
on appeal.

be made and judgment rendered in the manner set forth in Section 92-835, Revised Codes of Montana, 1947.

Appeal to  
supreme court.

Section 65. **Appeal to supreme court.** Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the state of Montana from any final order, judgment, or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court, without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

Employer  
liability.

Section 66. **Employer liability.** There is imposed on every employer subject to this act a liability for the payment of compensation as herein provided.

No vested right  
to compensation.

Section 67. **No vested right to compensation.** The right to the compensation provided for herein shall not, nor shall the rate or amount thereof be, or become vested or continuing rights, in persons awarded compensation under this act, or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this act or any amendment hereof, or to wholly discontinue to all persons all compensation provided for by this act, or any amendment hereof.

Liberal  
construed.

Section 68. **This act to be liberally construed.** Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

Repealing clause.

Section 69. All acts or parts of acts in conflict herewith are hereby repealed.

Section 70. This act shall be in full force and effect from and after its date of passage and approval. Effective immediately.

Approved March 7, 1959.

## CHAPTER 156

An Act Relating to the Distribution of Monies Received by the State of Montana Under and by Virtue of the Flood Control Act of 1954 Under Title Thirty-three (33) United States Code Annotated Section 701-c-3; Providing for the Distribution of Such Monies by the State to the Counties of Montana Wherein Such Flood Control Land Is Situated; Providing the Counties Receiving Such Monies Shall Expend Fifty Percent (50%) Thereof for the Benefit of the County Common Schools in the County Wherein Such Flood Control Land Is Situated and Fifty Percent (50%) Thereof for the Benefit of the General Public Roads in the County Wherein Such Flood Control Land Is Situated; Providing and Designating the Funds Into Which Such Monies Shall Be Distributed by the County Concerned; Providing for a Repealing Clause; and Providing for an Effective Date of This Act.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Section 1. All monies received or hereafter to be received by the State of Montana from the Secretary of the Treasury of the United States, under and by virtue of the Flood Control Act of 1954, under title thirty-three (33) United States Code annotated Section 701-c-3, or which are now held in suspense accounts within the State of Montana, shall be distributed by the state to the County Treasurers of the counties of the State of Montana wherein the flood control land is situated.

Distribution  
of monies  
received under  
flood control  
act of 1954 to  
county  
treasurers.

Section 2. All monies received or to be received by the County Treasurers of the counties of the State of Montana wherein such flood control land is situated shall be deposited in the funds designated as the County Common School tax fund and the General Public Road fund, and shall be expended as follows:

Deposit  
of monies  
by county  
treasurers.